

“Challenging Vehicle Seizures by Customs & Excise”

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What to do if your client’s vehicle is seized by Customs and Excise – Mario Angiolini and Valentina Sloane examine the different procedures available for challenging the seizure.

With the coming into force of Council Directive 92/12, travellers have had a Community law right to import unlimited amounts of tobacco and alcohol from the EU, provided they are for their own use. Whilst this right is widely publicised to attract day trippers, little warning is given of the existence of guidance levels for quantities of imported goods and the dangers of exceeding them.

Duty is no longer payable on goods imported from other Member States by private individuals unless such goods are held for commercial purposes or otherwise not held for “own use”. The Excise Duties (Personal Reliefs) Order 1992 sets out the guidance levels used in deciding whether goods are held for a commercial purpose. Should individuals import excise goods in quantities exceeding these guidance levels, a presumption arises that the goods are held for commercial purposes **unless** the individual is able to satisfy Customs and Excise otherwise. If the individual fails to discharge this burden, the excise goods become liable to forfeiture under section 49 of the Customs and Management Act 1979 (“CEMA”). Customs and Excise can then seize not only the goods in excess of the guidance (section 139) but also the vehicle used to transport the goods and anything else found with the goods, including other excise goods, even if below the guidance levels (section 141).

Since July 2000, Customs and Excise have adopted a tough stance towards the evasion of excise duty: in the year 2000/2001, over 10,000 vehicles were seized by them as a consequence of the importation of excise goods not for personal use. So what steps should you take if you are approached by a client whose vehicle has been seized?

There are two avenues of challenging seizure:

- (i) Challenge to the decision that the goods were liable to forfeiture. This will be by means of condemnation proceedings in the magistrates’ court or High Court;
- (ii) Challenge to the decision of Customs and Excise not to exercise their discretion to restore the goods or vehicle.

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This will be by means of a request for a review and, if necessary, an appeal to the VAT tribunal.

Steps should therefore be taken to ensure compliance with the time-limits so that each remains open, if appropriate, as they are not mutually exclusive.

Condemnation proceedings

Condemnation proceedings are appropriate if the goods were for your client's own use. The statutory definition of "own use" includes personal gifts but does *not* include gifts for which an individual receives money or money's worth. If your client admits to having imported goods for friends and family from whom he will receive payment, even if only the cost of the goods or travelling expenses, condemnation proceedings will not be appropriate as the goods would not qualify for relief and would have been properly seized. The procedure is set out in Schedule 3 to CEMA.

- You must give notice of your client's claim in writing at any office of Customs and Excise within **one month of the date of seizure**. There is no power to extend this time limit.
- No particular form of notice is required and a short letter will suffice. The notice **must** contain the name and address of the claimant (or the name and address of a solicitor in the United Kingdom in cases involving claimants who are outside the United Kingdom).
- At the same time, you can request Customs and Excise to exercise their discretion to **deliver up** the goods and vehicle, pending condemnation proceedings, upon payment of a sum not exceeding their value, including any unpaid duty.
- Once Customs and Excise have received notice of the claim, they are under a duty to institute condemnation proceedings, although there is no time-limit for doing so.
- If the Court finds that the goods were liable to forfeiture, they will be condemned as forfeited, otherwise, the goods and vehicle will be restored to your client.

Appeal to the VAT tribunal

Customs and Excise have a discretionary power to restore any "thing" forfeited or seized. Such discretion can be exercised whether or not the vehicle or goods were, in fact, properly seized.

- Your first step should always be to request restoration of the vehicle. This will not prevent a subsequent claim for condemnation, provided that the time limit for such a claim is not exceeded. Although the request itself is not subject to a time-limit, it should be submitted at the earliest opportunity. It need not be in any particular form nor contain any specific information.
- If the request is rejected, do *not* attempt to appeal immediately to the VAT Tribunal. You must first request a review of the decision **within 45 days of the notification of rejection**. The review request should set out all relevant circumstances such as: the value of the vehicle; whether the goods were intended for friends or family, rather than a commercial purpose; whether it is a first offence and any hardship or other exceptional circumstances which warrant restoration.
- Customs and Excise are then under a duty to review the decision within 45 days of the request to review, failing which, the original decision is deemed to have been confirmed.
- If your client wishes to appeal the review decision, you have **30 days from the review decision** (or deemed decision) to lodge your appeal with the Tribunal.
- The Tribunal's jurisdiction on appeal is not a full jurisdiction and is limited to considering whether the review decision is not one which could reasonably have been arrived at (i.e. *Wednesbury* unreasonable). This will include considerations of whether the decision was contrary to European law, including the principle of proportionality and the European Convention on Human Rights.
- The remedies available from the Tribunal are limited to quashing the review decision and requiring the Commissioners of Customs and Excise to conduct a further review in accordance with the Tribunal's directions.

The Court of Appeal decision in Lindsay

Customs and Excise's policy of seizure and restoration of vehicles has recently been reviewed by the Court of Appeal in *Commissioners of Customs and Excise v. Lindsay* (20 February 2002). The court clarified that in deciding whether or not to restore a vehicle, Customs and Excise must apply their policy proportionately, having regard to such factors as the scale of the importation, whether it was a first offence, the value of the vehicle and the degree of hardship to the individual, as well as whether the importation could properly be described as having a commercial purpose or if it was just for family and friends.

Other sources of information

The official website for Customs and Excise at www.hmce.gov.uk contains useful information and guidance on the importation of excise goods for personal use (Notice 1), seizure and restoration (Notice 12) as well as VAT and Duties Tribunal procedure (Notice 990).

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